

Exhibit J-2

1 vehicle owners to refrain from unfair and deceptive acts or practices under the
2 CLRA. And, in any event, all class vehicle owners suffered ascertainable loss of the
3 diminished value of their vehicles as a result of New GM's deceptive and unfair acts
4 and practices made in the course of New GM's business.

5 271. As a direct and proximate result of New GM's violations of the CLRA,
6 Plaintiffs and the California Class have suffered injury-in-fact and/or actual damage.

7 272. Under Cal. Civ. Code § 1780(a), Plaintiffs and the California Class seek
8 monetary relief against New GM measured as the diminution of the value of their
9 vehicles caused by New GM's violations of the CLRA as alleged herein.

10 273. Under Cal. Civ. Code § 1780(b), Plaintiffs seek an additional award
11 against New GM of up to \$5,000 for each California Class member who qualifies as
12 a "senior citizen" or "disabled person" under the CLRA. New GM knew or should
13 have known that its conduct was directed to one or more California Class Members
14 who are senior citizens or disabled persons. New GM's conduct caused one or more
15 of these senior citizens or disabled persons to suffer a substantial loss of property set
16 aside for retirement or for personal or family care and maintenance, or assets
17 essential to the health or welfare of the senior citizen or disabled person. One or
18 more California Class Members who are senior citizens or disabled persons are
19 substantially more vulnerable to New GM's conduct because of age, poor health or
20 infirmity, impaired understanding, restricted mobility, or disability, and each of them
21 suffered substantial physical, emotional, or economic damage resulting from New
22 GM's conduct.

23 274. Plaintiffs also seek punitive damages against New GM because it
24 carried out reprehensible conduct with willful and conscious disregard of the rights
25 and safety of others, subjecting Plaintiffs and the California Class to potential cruel
26 and unjust hardship as a result. New GM intentionally and willfully deceived

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1 Plaintiffs on life-or-death matters, and concealed material facts that only New GM
2 knew. New GM's unlawful conduct constitutes malice, oppression, and fraud
3 warranting punitive damages under Cal. Civ. Code § 3294.

4 275. Plaintiffs further seek an order enjoining New GM's unfair or deceptive
5 acts or practices, restitution, punitive damages, costs of court, attorneys' fees under
6 Cal. Civ. Code § 1780(e), and any other just and proper relief available under the
7 CLRA.

8 **COUNT XV**

9 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (Cal.**

10 **Bus. & Prof. Code § 17200, et seq.)**

11 276. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 277. This claim is brought only on behalf of Nationwide Class Members who
14 are California residents (the "California Class").

15 278. California Business and Professions Code § 17200 prohibits any
16 "unlawful, unfair, or fraudulent business act or practices." New GM has engaged in
17 unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.

18 279. New GM violated the unlawful prong of § 17200 by the following:

19 (a) violations of the CLRA, Cal. Civ. Code § 1750, et seq., as set
20 forth in California Count I by the acts and practices set forth in this Complaint.

21 (b) violation of the common-law claim of negligent failure to recall,
22 in that New GM knew or should have known the defects in class vehicles were
23 dangerous and/or were likely to be dangerous when used in a reasonably foreseeable
24 manner; New GM became aware of the attendant risks after the class vehicles were
25 sold; continued to gain information further corroborating the defects; and failed to
26 adequately recall the class vehicles, which failure was a substantial factor in causing
27 Plaintiffs and the Class harm, including diminished value and out-of-pocket costs.

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1 (c) violation of the National Traffic and Motor Vehicle Safety Act of
2 1996, codified at 49 U.S.C. §§ 30101-30170, and its regulations. Federal Motor
3 Vehicle Safety Standard (“FMVSS”) 573 governs a motor vehicle manufacturer’s
4 responsibility to notify NHTSA of a motor vehicle defect within five days of
5 determining that the defect is safety related. See 49 C.F.R. § 573.6. New GM
6 violated these reporting requirements by failing to report the myriad defects
7 discussed herein within the required time, and failing to timely recall all impacted
8 vehicles, despite its explicit promise in § 6.15 of the Sales Agreement to comply with
9 the Safety Act obligations of a “manufacturer” of Old GM vehicles.

10 280. New GM also violated the unfair and fraudulent prong of section 17200
11 by systematically devaluing safety and concealing defects in the class vehicles,
12 information that was material to a reasonable consumer.

13 281. New GM also violated the unfair prong of section 17200 because the
14 acts and practices set forth in the Complaint, including systematically devaluing
15 safety and concealing defects in the class vehicles, offend established public policy,
16 and also because the harm New GM caused consumers greatly outweighs any
17 benefits associated with those practices. New GM’s conduct has also impaired
18 competition within the automotive vehicles market and has prevented Plaintiffs and
19 the California Class from making fully informed decisions about whether to lease,
20 purchase and/or retain the class vehicles.

21 282. From the date of its inception on July 11, 2009, New GM knew of many
22 serious defects the vehicles, because of (i) the knowledge of Old GM personnel who
23 remained at New GM; (ii) continuous reports, investigations, and notifications from
24 regulatory authorities; and (iii) ongoing performance of New GM’s TREAD Act
25 obligations, as discussed above. New GM became aware of other serious defects and
26 systemic safety issues years ago, but concealed all of that information.

27 283. New GM was also aware that it valued cost-cutting over safety, selected
28 parts from the cheapest supplier regardless of quality, and actively discouraged

1 employees from finding and flagging known safety defects, and that this approach
2 would necessarily cause the existence of more defects in the vehicles it designed and
3 manufactured and the failure to disclose and remedy defects in all the class vehicles.
4 New GM concealed this information as well.

5 284. By failing to disclose and by actively concealing the many defects in
6 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality
7 and by presenting itself as a reputable manufacturer that valued safety and stood
8 behind its vehicles after they were sold, New GM engaged in unlawful, unfair, or
9 fraudulent business acts or practices in violation of the UCL.

10 285. In the course of New GM's business, it willfully failed to disclose and
11 actively concealed the dangerous risk posed by the defects discussed above. New
12 GM compounded the deception by repeatedly asserting that the class vehicles were
13 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
14 that valued safety and stood behind its vehicles once they are on the road.

15 286. New GM's unfair or deceptive acts or practices were likely to and did i
16 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
17 reliability of the class vehicles, and the true value of the class vehicles.

18 287. New GM intentionally and knowingly misrepresented material facts
19 regarding the class vehicles with an intent to mislead Plaintiffs and the California
20 Class.

21 288. New GM knew or should have known that its conduct violated the UCL

22 289. As alleged above, New GM made material statements about the safety
23 and reliability of the class vehicles and the GM brand that were either false or
24 misleading.

25 290. New GM owed Plaintiffs a duty to disclose the true safety and reliability
26 of the class vehicles and the devaluing of safety at New GM, because New GM:

27 (a) Possessed exclusive knowledge that it valued cost-cutting over
28 safety, selected parts from the cheapest supplier regardless of quality, and actively

1 discouraged employees from finding and flagging known safety defects, and that this
2 approach would necessarily cause the existence of more defects in the vehicles it
3 designed and manufactured;

4 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

5 (c) Made incomplete representations about the safety and reliability
6 of the class vehicles generally, and the valve guide defects in particular, while
7 purposefully withholding material facts from Plaintiffs that contradicted these
8 representations.

9 291. Because New GM fraudulently concealed the defects in the class
10 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
11 attached to those vehicles by New GM's conduct, they are now worth significantly
12 less than they otherwise would be.

13 292. New GM's systemic devaluation of safety and its concealment of the
14 defects in GM the class vehicles were material to Plaintiffs and the California Class.
15 A vehicle made by a reputable manufacturer of vehicles is worth more than an
16 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
17 conceals defects rather than promptly remedying them.

18 293. Plaintiffs and the California Class suffered ascertainable loss caused by
19 New GM's misrepresentations and its concealment of and failure to disclose material
20 information. Plaintiffs who purchased class vehicles after the date of New GM's
21 inception either would have paid less for their vehicles or would not have purchased
22 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
23 of New GM's misconduct.

24 294. Regardless of time of purchase or lease, no Plaintiffs would have
25 maintained and continued to drive their vehicles had they been aware of New GM's
26 misconduct. By contractually assuming TREAD Act responsibilities with respect to
27 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
28 those vehicles because the TREAD Act on its face only applies to vehicle

1 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
2 vehicle owners to refrain from unfair and deceptive acts or practices under the UCL.
3 And, in any event, all class vehicle owners suffered ascertainable loss in the form of
4 diminished value of their vehicles as a result of New GM's deceptive and unfair acts
5 and practices made in the course of New GM's business.

6 295. As a direct and proximate result of New GM's violations of the UCL,
7 Plaintiffs and the California Class have suffered injury-in-fact and/or actual damage.

8 296. Plaintiffs request that this Court enter such orders or judgments as may
9 be necessary, including a declaratory judgment that New GM has violated the UCL;
10 an order enjoining New GM from continuing its unfair, unlawful, and/or deceptive
11 practices; an order supervising the recalls; an order and judgment restoring to the
12 California Class Members any money lost as the result of New GM's unfair,
13 unlawful, and deceptive trade practices, including restitution and disgorgement of
14 any profits New GM received as a result of its unfair, unlawful, and/or deceptive
15 practices, as provided in Cal. Bus. & Prof. Code § 17203, Cal Civ. Proc. § 384 and
16 Cal. Civ. Code § 3345; and for such other relief as may be just and proper.

17 **COUNT XVI**

18 **FRAUD BY CONCEALMENT**

19 297. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 298. This claim is brought on behalf of Nationwide Class Members who are
22 California residents (the "California Class").

23 299. New GM concealed and suppressed material facts concerning the
24 quality of the class vehicles.

25 300. New GM concealed and suppressed material facts concerning the
26 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
27 studious avoidance of quality issues, and a shoddy design process.

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1 301. New GM concealed and suppressed material facts concerning the
2 defects in the class vehicles, and that it valued cost-cutting over quality and took
3 steps to ensure that its employees did not reveal known defects to regulators or
4 consumers.

5 302. New GM did so in order to boost confidence in its vehicles and falsely
6 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle
7 that New GM was a reputable manufacturer that stands behind its vehicles after they
8 are sold and that its vehicles are safe and reliable. The false representations were
9 material to consumers, both because they concerned the quality and safety of the
10 class vehicles and because the representations played a significant role in the value of
11 the vehicles.

12 303. New GM had a duty to disclose the defects in the class vehicles because
13 they were known and/or accessible only to New GM, were in fact known to New
14 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
15 superior knowledge and access to the facts, and New GM knew the facts were not
16 known to or reasonably discoverable by Plaintiffs and the California Class. New
17 GM also had a duty to disclose because it made many general affirmative
18 representations about the safety, quality, and lack of defects in its vehicles, as set
19 forth above, which were misleading, deceptive and incomplete without the disclosure
20 of the additional facts set forth above regarding defects in the class vehicles. Having
21 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
22 the partial truth, but the entire truth. These omitted and concealed facts were material
23 because they directly impact the value of the class vehicles purchased or leased by
24 Plaintiffs and the California Class.

25 304. New GM actively concealed and/or suppressed these material facts, in
26 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
27 image and cost New GM money, and it did so at the expense of Plaintiffs and the
28 California Class.

1 305. On information and belief, New GM has still not made full and adequate
2 disclosure and continues to defraud Plaintiffs and the California Class and conceal
3 material information regarding defects that exist in the class vehicles.

4 306. Plaintiffs and the California Class were unaware of these omitted
5 material facts and would not have acted as they did if they had known of the
6 concealed and/or suppressed facts, in that they would not have purchased cars
7 manufactured by New GM; and/or they would not have purchased cars manufactured
8 by Old GM in the time after New GM had come into existence and had fraudulently
9 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
10 not have continued to drive their vehicles or would have taken other affirmative
11 steps. Plaintiffs' and the California Class's actions were justified. New GM was in
12 exclusive control of the material facts and such facts were not known to the public,
13 Plaintiffs, or the California Class.

14 307. Because of the concealment and/or suppression of the facts, Plaintiffs
15 and the California Class sustained damage because they own vehicles that
16 diminished in value as a result of New GM's concealment of, and failure to timely
17 disclose, the defects in the class vehicles and the quality issues engendered by New
18 GM's corporate policies. Had they been aware of the defects that existed in the class
19 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
20 New GM came into existence either would have paid less for their vehicles or would
21 not have purchased or leased them at all; and no Plaintiffs regardless of time of
22 purchase or lease would have maintained their vehicles.

23 308. The value of all California Class Members' vehicles has diminished as a
24 result of New GM's fraudulent concealment of the defects which have tarnished the
25 Corvette brand and made any reasonable consumer reluctant to purchase any of the
26 class vehicles, let alone pay what otherwise would have been fair market value for
27 the vehicles.

1 309. Accordingly, New GM is liable to the California Class for damages in
2 an amount to be proven at trial.

3 310. New GM's acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the California Class's
5 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
6 of punitive damages in an amount sufficient to deter such conduct in the future,
7 which amount is to be determined according to proof.

8 **COUNT XVII**

9 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
10 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
11 **(Cal. Civ. Code §§ 1791.1 & 1792)**

12 311. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 312. This claim is brought only on behalf of California residents who are
15 members of the Nationwide Class ("California Class").

16 313. Plaintiffs are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

17 314. The class vehicles are "consumer goods" within the meaning of Civ.
18 Code § 1791(a).

19 315. New GM was a "manufacturer" of the class vehicles within the meaning
20 of Cal. Civ. Code § 1791(j).

21 316. New GM impliedly warranted to Plaintiffs and the California Class that
22 its class vehicles sold or leased on or after July 11, 2009 were "merchantable" within
23 the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792; however, the class vehicles do
24 not have the quality that a buyer would reasonably expect, and were therefore not
25 merchantable.

26 317. 1536. Cal. Civ. Code § 1791.1(a) states:

27 "Implied warranty of merchantability" or "implied warranty that goods are
28 merchantable" means that the consumer goods meet each of the following:

1 (1) Pass without objection in the trade under the contract
2 description.

3 (2) Are fit for the ordinary purposes for which such
4 goods are used.

5 (3) Are adequately contained, packaged, and labeled.

6 (4) Conform to the promises or affirmations of fact
7 made on the container or label.

8 318. The class vehicles would not pass without objection in the automotive
9 trade because of the defects that cause the class vehicles to suffer unusual and early
10 engine wear and failure.

11 319. Because of these defects, the class vehicles are not reliable to drive and
12 thus not fit for ordinary purposes.

13 320. The class vehicles are not adequately labeled because the labeling fails
14 to disclose the defects. New GM failed to warn about the defects in the class
15 vehicles.

16 321. New GM breached the implied warranty of merchantability by selling
17 class vehicles containing defects. These defects have deprived Plaintiffs and the
18 California Class of the benefit of their bargain and have caused the class vehicles to
19 depreciate in value.

20 322. Notice of breach is not required because Plaintiffs and California Class
21 members did not purchase their automobiles directly from New GM.

22 323. As a direct and proximate result of New GM's breach of its duties under
23 California's law, Plaintiffs and California Class members received goods whose
24 defective condition substantially impairs their value. Plaintiffs and the California
25 Class members have been damaged by the diminished value of their vehicles, the
26 product's malfunctioning, and the loss of use of their class vehicles.

27 324. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and California
28 Class members are entitled to damages and other legal and equitable relief including

1 at their election, the purchase price of their class vehicles, or the overpayment or
2 diminution in value of their class vehicles.

3 325. Under Cal. Civ. Code § 1794, Plaintiffs and California Class members
4 are entitled to costs and attorneys' fees.

5 **COUNT XVIII**

6 **NEGLIGENT FAILURE TO RECALL**

7 326. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 327. This claim is brought only on behalf of California residents who are
10 members of the Nationwide Class (the "California Class").

11 328. New GM manufactured, distributed, and sold class vehicles.

12 329. New GM knew or reasonably should have known that the class vehicles
13 were dangerous and/or were likely to be dangerous when used in a reasonably
14 foreseeable manner.

15 330. New GM either knew of the defects before the vehicles were sold, or
16 became aware of the defects and their attendant risks after the vehicles were sold.

17 331. New GM continued to gain information further corroborating the
18 defects and their risks from its inception until this year.

19 332. New GM failed to adequately recall the class vehicles in a timely
20 manner.

21 333. Purchasers of the class vehicles, including the California Class, were
22 harmed by New GM's failure to adequately recall all the class vehicles in a timely
23 manner and have suffered damages, including, without limitation, damage to other
24 components of the class vehicles caused by the defects, the diminished value of the
25 class vehicles, the cost of modification of the defective systems, and the costs
26 associated with the loss of use of the class vehicles.

27 334. New GM's failure to timely and adequately recall the class vehicles wa
28 a substantial factor in causing the purchasers' harm, including that of Plaintiffs and

1 the California Class.

2 **COUNT XIX**

3 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**
4 **AGAINST OLD GM IN BANKRUPTCY**

5 335. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 336. This claim is brought only on behalf of Class members who are
8 California residents (the "California Class").

9 337. New GM was aware of the defects in class vehicles sold by Old GM
10 from the moment it came into existence upon entry of the Sale Order And Sale
11 Agreement by which New GM acquired substantially all the assets of Old GM.

12 338. The California Class did not receive notice of the defect in class
13 vehicles prior to the entry of the Sale Order. No recall occurred.

14 339. In September of 2009, the bankruptcy court entered the Bar Date Order
15 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claim
16 to be filed against Old GM.

17 340. Because New GM concealed its knowledge of the defect in class
18 vehicles, the California Class did not receive notice of the defect prior to the passage
19 of the Bar Date. No recall occurred.

20 341. In 2011, the bankruptcy court approved a Chapter 11 Plan under which
21 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceed
22 of the bankruptcy sale to, among others, the holders of claims that were ultimately
23 allowed.

24 342. The out-of-pocket consideration provided by New GM for its
25 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of
26 New GM common stock and two series of warrants, each to purchase 7.5% of the
27 post-closing shares of New GM (collectively, the "New GM Securities").

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1 343. Through an “accordion feature” in the Sale Agreement, New GM agreed
2 that it would provide additional consideration if the aggregate amount of allowed
3 general unsecured claims exceeded \$35 billion. In that event, New GM would be
4 required to issue additional shares of New GM Common Stock for the benefit of the
5 GUC Trust’s beneficiaries.

6 344. As of September 30, 2014, the total amount of Allowed Claims was
7 approximately \$31.854 billion, and the total amount of Disputed Claims was
8 approximately \$79.5 million.

9 345. As of September 30, 2014, the GUC Trust had distributed more than
10 89% of the New GM Securities. After a subsequent November 12 distribution, the
11 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all of
12 which is already slated to pay the GUC Trust’s expenses and existing beneficiaries of
13 the Trust.

14 346. But for New GM’s fraudulent concealment of the defects, the California
15 Class would have filed claims against Old GM before the Bar Date.

16 347. Had the California Class filed timely claims before the Bar Date, the
17 claims would have been allowed.

18 348. New GM’s concealment and suppression of the material fact of the
19 defect in class vehicles over the first several months of its existence served to prevent
20 the filing of claims by the Class.

21 349. New GM had a duty to disclose the defects in class vehicles because the
22 information was known and/or accessible only to New GM who had superior
23 knowledge and access to the facts, and New GM knew the facts were not known to
24 or reasonably discoverable by Plaintiffs and the California Class. These omitted and
25 concealed facts were material because they directly impacted the safety and the value
26 of the class vehicles purchased or leased by Plaintiffs and the California Class, who
27 had a limited period of time in which to file a claim against the manufacturer of the
28 vehicles, Old GM.

1 350. Plaintiffs and the California Class were unaware of these omitted
2 material facts and would not have acted as they did if they had known of the
3 concealed and/or suppressed facts. Plaintiffs' and the California Class's actions were
4 justified. New GM was in exclusive control of the material facts and such facts were
5 not known to the public, Plaintiffs, or the California Class.

6 351. Because of the concealment and/or suppression of the facts, Plaintiffs
7 and the California Class sustained damage because they lost their chance to file a
8 claim against Old GM and seek payment from the GUC Trust. Had they been aware
9 of the defects that existed in their vehicles, Plaintiffs would have timely filed claims
10 and would have recovered from the GUC Trust.

11 352. Accordingly, New GM is liable to the California Class members for
12 their damages in an amount to be proven at trial.

13 353. New GM's acts were done maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiffs' and the California Class's
15 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
16 of punitive damages in an amount sufficient to deter such conduct in the future,
17 which amount is to be determined according to proof.

18 **COUNT XX**

19 **THIRD-PARTY BENEFICIARY CLAIM**

20 354. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 355. This claim is brought only on behalf of Class members who are
23 California residents (the "California Class").

24 356. In the Sales Agreement through which New GM acquired substantially
25 all of the assets of New GM, New GM explicitly agreed as follows:

26 From and after the Closing, [New GM] shall comply with the
27 certification, reporting and recall requirements of the National Traffic
28 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation

1 Recall Enhancement, Accountability and Documentation Act, the Clean
2 Air Act, the California Health and Safety Code and similar Laws, in
3 each case, to the extent applicable in respect of vehicles and vehicle
4 parts manufactured or distributed by [Old GM].

5 357. With the exception of the portion of the agreement that purports to
6 immunize New GM from its own independent misconduct with respect to cars and
7 parts made by Old GM, the Sales Agreement is a valid and binding contract.

8 358. But for New GM's covenant to comply with the TREAD Act with
9 respect to cars and parts made by Old GM, the TREAD Act would have no
10 application to New GM with respect to those cars and parts. That is because the
11 TREAD Act on its face imposes reporting and recall obligations only on the
12 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

13 359. Because New GM agreed to comply with the TREAD Act with respect
14 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
15 make quarterly submissions to NHTSA of "early warning reporting" data, including
16 incidents involving property damage, warranty claims, consumer complaints, and
17 field reports concerning failure, malfunction, lack of durability or other performance
18 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
19 underlying records on which the early warning reports are based and all records
20 containing information on malfunctions that may be related to motor vehicle safety.
21 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
22 or should know that a safety defect exists – including notifying NHTSA and
23 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
24 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

25 360. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
26 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
27 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
28 benefit of having a manufacturer responsible for monitoring the safety of their Old

1 GM vehicles and making certain that any known defects would be promptly
2 remedied.

3 361. Although the Sale Order which consummated New GM's purchase of
4 Old GM purported to give New GM immunity from claims concerning vehicles or
5 parts made by Old GM, the bankruptcy court recently ruled that provision to be
6 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
7 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
8 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
9 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
10 breaches of the promise it made in the Sale Agreement.

11 362. New GM breached its covenant to comply with the TREAD Act with
12 respect to the class vehicles, as it failed to take action to remediate the defects at any
13 time, up to the present.

14 363. Plaintiffs and the California Class were damaged as a result of New
15 GM's breach. Because of New GM's failure to timely remedy the defect in class
16 vehicles, the value of Old GM class vehicles has diminished in an amount to be
17 determined at trial.

18 **COUNT. XXI**

19 **UNJUST ENRICHMENT**

20 364. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 365. This claim is brought on behalf of members of the California Class who
23 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
24 after New GM came into existence, and who purchased or leased class vehicles in the
25 time period before New GM came into existence, which cars were still on the road
26 after New GM came into existence (the "California Unjust Enrichment Class").

27 366. New GM has received and retained a benefit from the Plaintiffs and
28 inequity has resulted.

1 367. New GM has benefitted from selling and leasing defective cars,
2 including Certified Pre-Owned cars, whose value was artificially inflated by New
3 GM's concealment of defect issues that plagued class vehicles, for more than they
4 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
5 pay other costs.

6 368. With respect to the class vehicles purchased before New GM came into
7 existence that were still on the road after New GM came into existence and as to
8 which New GM had unjustly and unlawfully determined not to recall, New GM
9 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
10 from its statements about the success of New GM.

11 369. Thus, all California Unjust Enrichment Class Members conferred a
12 benefit on New GM.

13 370. It is inequitable for New GM to retain these benefits.

14 371. Plaintiffs were not aware about the true facts about class vehicles, and
15 did not benefit from GM's conduct.

16 372. New GM knowingly accepted the benefits of its unjust conduct.

17 373. As a result of New GM's conduct, the amount of its unjust enrichment
18 should be disgorged, in an amount according to proof.

19 Florida

20 **COUNT XXII**

21 **VIOLATION OF FLORIDA'S UNFAIR & DECEPTIVE**

22 **TRADE PRACTICES ACT**

23 **(FLA. STAT. § 501.201, et seq.)**

24 374. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.

26 375. This claim is brought only on behalf of Nationwide Class Members who
27 are Florida residents (the "Florida Class").

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1 376. Plaintiffs are “consumers” within the meaning of the Florida Unfair and
2 Deceptive Trade Practices Act (“FUDTPA”), FLA. STAT. § 501.203(7).

3 377. New GM engaged in “trade or commerce” within the meaning of FLA.
4 STAT. § 501.203(8).

5 378. FUDTPA prohibits “[u]nfair methods of competition, unconscionable
6 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade
7 or commerce ...” FLA. STAT. § 501.204(1). New GM participated in unfair and
8 deceptive trade practices that violated the FUDTPA as described herein.

9 379. In the course of its business, New GM systematically devalued safety
10 and concealed the defects in class vehicles as described herein and otherwise
11 engaged in activities with a tendency or capacity to deceive. New GM also engaged
12 in unlawful trade practices by employing deception, deceptive acts or practices,
13 fraud, misrepresentations, or concealment, suppression or omission of any material
14 fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of class vehicles.

16 380. From the date of its inception on July 11, 2009, New GM knew of many
17 serious defects affecting many models and years of the class vehicles, because of (i)
18 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
19 reports, investigations, and notifications from regulatory authorities; and (iii)
20 ongoing performance of New GM’s TREAD Act obligations. New GM became
21 aware of other serious defects and systemic safety issues years ago, but concealed all
22 of that information.

23 381. New GM was also aware that it valued cost-cutting over safety, selected
24 parts from the cheapest supplier regardless of quality, and actively discouraged
25 employees from finding and flagging known safety defects, and that this approach
26 would necessarily cause the existence of more defects in the vehicles it designed and
27 manufactured and the failure to disclose and remedy defects in all GM-branded
28 vehicles. New GM concealed this information as well.

1 382. By failing to disclose and by actively concealing the many defects in
2 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
3 presenting itself as a reputable manufacturer that valued safety and stood behind its
4 vehicles after they were sold, New GM engaged in unfair, unconscionable, and
5 deceptive business practices in violation of the FUDTPA.

6 383. In the course of New GM's business, it willfully failed to disclose and
7 actively concealed the dangerous risk posed by the defects discussed above. New
8 GM compounded the deception by repeatedly asserting that GM-branded vehicles
9 were safe, reliable, and of high quality, and by claiming to be a reputable
10 manufacturer that valued safety and stood behind its vehicles once they are on the
11 road.

12 384. New GM's unfair or deceptive acts or practices were likely to and did in
13 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
14 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at
15 New GM, and the true value of the class vehicles.

16 385. New GM intentionally and knowingly misrepresented material facts
17 regarding the class vehicles with an intent to mislead Plaintiffs and the Florida Class.

18 386. New GM knew or should have known that its conduct violated the
19 FUDTPA.

20 387. As alleged above, New GM made material statements about the safety
21 and reliability of the class vehicles and the GM brand that were either false or
22 misleading.

23 388. New GM owed Plaintiffs a duty to disclose the true safety and reliability
24 of the class vehicles and the devaluing of safety at New GM, because New GM:

25 (a) Possessed exclusive knowledge that it valued cost-cutting over
26 safety, selected parts from the cheapest supplier regardless of quality, and actively
27 discouraged employees from finding and flagging known safety defects, and that this
28 approach would necessarily cause the existence of more defects in the vehicles it

1 designed and manufactured;

2 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

3 (c) Made incomplete representations about the safety and reliability
4 of the class vehicles generally, and the valve guide defect in particular, while
5 purposefully withholding material facts from Plaintiffs that contradicted these
6 representations.

7 389. Because New GM fraudulently concealed the defects in the class
8 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
9 attached to those vehicles by New GM's conduct, they are now worth significantly
10 less than they otherwise would be.

11 390. New GM's systemic devaluation of safety and its concealment of the
12 defects in the class vehicles were material to Plaintiffs and the Florida Class. A
13 vehicle made by a reputable manufacturer of vehicles is worth more than an
14 otherwise comparable vehicle made by a disreputable manufacturer of unsafe
15 vehicles that conceals defects rather than promptly remedying them.

16 391. Plaintiffs and the Florida Class suffered ascertainable loss caused by
17 New GM's misrepresentations and its concealment of and failure to disclose material
18 information. Plaintiffs who purchased the class vehicles after the date of New GM's
19 inception either would have paid less for their vehicles or would not have purchased
20 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
21 of New GM's misconduct.

22 392. Regardless of time of purchase or lease, no Plaintiffs would have
23 maintained and continued to drive their vehicles had they been aware of New GM's
24 misconduct no Plaintiffs would have maintained and continued to drive their vehicle:
25 had they been aware of New GM's misconduct had they been aware of New GM's
26 misconduct. By contractually assuming TREAD Act responsibilities with respect to
27 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
28 those vehicles because the TREAD Act on its face only applies to vehicle

1 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
2 vehicle owners to refrain from unfair and deceptive acts or practices under the
3 FUDTPA. And, in any event, all class vehicle owners suffered ascertainable loss in
4 the form of diminished value of their vehicles as a result of New GM's deceptive and
5 unfair acts and practices made in the course of New GM's business.

6 393. Plaintiffs and Florida Class Members risk irreparable injury as a result
7 of New GM's act and omissions in violation of the FUDTPA.

8 394. As a direct and proximate result of New GM's violations of the
9 FUDTPA, Plaintiffs and the Florida Class have suffered injury-in-fact and/or actual
10 damage.

11 395. Plaintiffs and the Florida Class are entitled to recover their actual
12 damages under FLA. STAT. § 501.211(2) and attorneys' fees under FLA. STAT. §
13 501.2105(1).

14 396. Plaintiffs also seek an order enjoining New GM's unfair, unlawful,
15 and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and
16 proper relief available under the FUDTPA.

17 **COUNT XXIII**

18 **FRAUD BY CONCEALMENT**

19 397. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 398. This claim is brought on behalf of Nationwide Class Members who are
22 Florida residents (the "Florida Class").

23 399. New GM concealed and suppressed material facts concerning the
24 quality of the class vehicles.

25 400. New GM concealed and suppressed material facts concerning the
26 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
27 studious avoidance of quality issues, and a shoddy design process.

1 401. New GM concealed and suppressed material facts concerning the
2 defects in the class vehicles, and that it valued cost-cutting over quality and took
3 steps to ensure that its employees did not reveal known defects to regulators or
4 consumers.

5 402. New GM did so in order to boost confidence in its vehicles and falsely
6 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
7 that New GM was a reputable manufacturer that stands behind its vehicles after they
8 are sold and that its vehicles are safe and reliable. The false representations were
9 material to consumers, both because they concerned the quality and safety of the
10 class vehicles and because the representations played a significant role in the value of
11 the vehicles.

12 403. New GM had a duty to disclose the defects in the class vehicles because
13 they were known and/or accessible only to New GM, were in fact known to New
14 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
15 superior knowledge and access to the facts, and New GM knew the facts were not
16 known to or reasonably discoverable by Plaintiffs and the Florida Class. New GM
17 also had a duty to disclose because it made many general affirmative representations
18 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
19 were misleading, deceptive and incomplete without the disclosure of the additional
20 facts set forth above regarding defects in the class vehicles. Having volunteered to
21 provide information to Plaintiffs, GM had the duty to disclose not just the partial
22 truth, but the entire truth. These omitted and concealed facts were material because
23 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
24 and the Florida Class.

25 404. New GM actively concealed and/or suppressed these material facts, in
26 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
27 image and cost New GM money, and it did so at the expense of Plaintiffs and the
28 Florida Class.

1 405. On information and belief, New GM has still not made full and adequate
2 disclosure and continues to defraud Plaintiffs and the Florida Class and conceal
3 material information regarding defects that exist in the class vehicles.

4 406. Plaintiffs and the Florida Class were unaware of these omitted material
5 facts and would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased cars manufactured by New
7 GM; and/or they would not have purchased cars manufactured by Old GM in the
8 time after New GM had come into existence and had fraudulently opted to conceal,
9 and to misrepresent, the true facts about the vehicles; and/or would not have
10 continued to drive their vehicles or would have taken other affirmative steps.
11 Plaintiffs' and the Florida Class's actions were justified. New GM was in exclusive
12 control of the material facts and such facts were not known to the public, Plaintiffs,
13 or the Florida Class.

14 407. Because of the concealment and/or suppression of the facts, Plaintiffs
15 and the Florida Class sustained damage because they own vehicles that diminished in
16 value as a result of New GM's concealment of, and failure to timely disclose, the
17 defects in the class vehicles and the quality issues engendered by New GM's
18 corporate policies. Had they been aware of the defects that existed in the class
19 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
20 New GM came into existence either would have paid less for their vehicles or would
21 not have purchased or leased them at all; and no Plaintiffs regardless of time of
22 purchase or lease would have maintained their vehicles.

23 408. The value of all Florida Class Members' vehicles has diminished as a
24 result of New GM's fraudulent concealment of the defects which have tarnished the
25 Corvette brand and made any reasonable consumer reluctant to purchase any of the
26 class vehicles, let alone pay what otherwise would have been fair market value for
27 the vehicles.

1 409. Accordingly, New GM is liable to the Florida Class for damages in an
2 amount to be proven at trial.

3 410. New GM's acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Florida Class's
5 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
6 of punitive damages in an amount sufficient to deter such conduct in the future,
7 which amount is to be determined according to proof.

8 **COUNT NO. XXIV**

9 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**
10 **AGAINST OLD GM IN BANKRUPTCY**

11 411. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 412. This claim is brought only on behalf of the Florida Class.

14 413. New GM was aware of the defects in class vehicles sold by Old GM
15 from the moment it came into existence upon entry of the Sale Order And Sale
16 Agreement by which New GM acquired substantially all the assets of Old GM.

17 414. The Florida Class did not receive notice of the defect prior in class
18 vehicles to the entry of the Sale Order. No recall occurred.

19 415. In September of 2009, the bankruptcy court entered the Bar Date Order,
20 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims
21 to be filed against Old GM.

22 416. Because New GM concealed its knowledge of the defect in class
23 vehicles, the Florida Class did not receive notice of the defect prior to the passage of
24 the Bar Date. No recall occurred.

25 417. In 2011, the bankruptcy court approved a Chapter 11 Plan under which
26 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds
27 of the bankruptcy sale to, among others, the holders of claims that were ultimately
28 allowed.

1 418. The out-of-pocket consideration provided by New GM for its
2 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of
3 New GM common stock and two series of warrants, each to purchase 7.5% of the
4 post-closing shares of New GM (collectively, the “New GM Securities”).

5 419. Through an “accordion feature” in the Sale Agreement, New GM agreed
6 that it would provide additional consideration if the aggregate amount of allowed
7 general unsecured claims exceeded \$35 billion. In that event, New GM would be
8 required to issue additional shares of New GM Common Stock for the benefit of the
9 GUC Trust’s beneficiaries.

10 420. As of September 30, 2014, the total amount of Allowed Claims was
11 approximately \$31.854 billion, and the total amount of Disputed Claims was
12 approximately \$79.5 million.

13 421. As of September 30, 2014, the GUC Trust had distributed more than
14 89% of the New GM Securities. After a subsequent November 12 distribution, the
15 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o
16 which is already slated to pay the GUC Trust’s expenses and existing beneficiaries o
17 the Trust.

18 422. But for New GM’s fraudulent concealment of the defects, the Florida
19 Class would have filed claims against Old GM before the Bar Date.

20 423. Had the Florida Class filed timely claims before the Bar Date, the
21 claims would have been allowed.

22 424. New GM’s concealment and suppression of the material fact of the
23 defect in class vehicles over the first several months of its existence served to preven
24 the filing of claims by the Florida Class.

25 425. New GM had a duty to disclose the defects in class vehicles because the
26 information was known and/or accessible only to New GM who had superior
27 knowledge and access to the facts, and New GM knew the facts were not known to
28 or reasonably discoverable by Plaintiffs and the Florida Class. These omitted and

1 concealed facts were material because they directly impacted the safety and the value
2 of the class vehicles purchased or leased by Plaintiffs and the Florida Class, who had
3 a limited period of time in which to file a claim against the manufacturer of the
4 vehicles, Old GM.

5 426. Plaintiffs and the Florida Class were unaware of these omitted material
6 facts and would not have acted as they did if they had known of the concealed and/or
7 suppressed facts. Plaintiffs' and the Florida Class's actions were justified. New GM
8 was in exclusive control of the material facts and such facts were not known to the
9 public, Plaintiffs, or the Florida Class.

10 427. Because of the concealment and/or suppression of the facts, Plaintiffs
11 and the Florida Class sustained damage because they lost their chance to file a claim
12 against Old GM and seek payment from the GUC Trust. Had they been aware of the
13 defects that existed in their vehicles, Plaintiffs would have timely filed claims and
14 would have recovered from the GUC Trust.

15 428. Accordingly, New GM is liable to the Florida Class members for their
16 damages in an amount to be proven at trial.

17 429. New GM's acts were done maliciously, oppressively, deliberately, with
18 intent to defraud, and in reckless disregard of Plaintiffs' and the Florida Class's
19 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
20 of punitive damages in an amount sufficient to deter such conduct in the future,
21 which amount is to be determined according to proof.

22 **COUNT XXV**

23 **THIRD-PARTY BENEFICIARY CLAIM**

24 430. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.

26 431. This claim is brought only on behalf of Class members who are Florida
27 residents (the "Florida Class").

1 432. In the Sales Agreement through which New GM acquired substantially
2 all of the assets of New GM, New GM explicitly agreed as follows:

3 From and after the Closing, [New GM] shall comply with the
4 certification, reporting and recall requirements of the National Traffic
5 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
6 Recall Enhancement, Accountability and Documentation Act, the Clean
7 Air Act, the California Health and Safety Code and similar Laws, in
8 each case, to the extent applicable in respect of vehicles and vehicle
9 parts manufactured or distributed by [Old GM].

10 433. With the exception of the portion of the agreement that purports to
11 immunize New GM from its own independent misconduct with respect to cars and
12 parts made by Old GM, the Sales Agreement is a valid and binding contract.

13 434. But for New GM's covenant to comply with the TREAD Act with
14 respect to cars and parts made by Old GM, the TREAD Act would have no
15 application to New GM with respect to those cars and parts. That is because the
16 TREAD Act on its face imposes reporting and recall obligations only on the
17 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

18 435. Because New GM agreed to comply with the TREAD Act with respect
19 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
20 make quarterly submissions to NHTSA of "early warning reporting" data, including
21 incidents involving property damage, warranty claims, consumer complaints, and
22 field reports concerning failure, malfunction, lack of durability or other performance
23 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
24 underlying records on which the early warning reports are based and all records
25 containing information on malfunctions that may be related to motor vehicle safety.
26 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
27 or should know that a safety defect exists – including notifying NHTSA and
28 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §

1 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

2 436. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
3 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
4 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
5 benefit of having a manufacturer responsible for monitoring the safety of their Old
6 GM vehicles and making certain that any known defects would be promptly
7 remedied.

8 437. Although the Sale Order which consummated New GM's purchase of
9 Old GM purported to give New GM immunity from claims concerning vehicles or
10 parts made by Old GM, the bankruptcy court recently ruled that provision to be
11 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
12 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
13 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
14 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
15 breaches of the promise it made in the Sale Agreement.

16 438. New GM breached its covenant to comply with the TREAD Act with
17 respect to the class vehicles, as it failed to take action to remediate the defects at any
18 time, up to the present.

19 439. Plaintiffs and the Florida Class were damaged as a result of New GM's
20 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
21 the value of class vehicles has diminished in an amount to be determined at trial.

22 **COUNT XXVI**

23 **UNJUST ENRICHMENT**

24 440. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.

26 441. This claim is brought on behalf of members of the Florida Class who
27 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
28 after New GM came into existence, and who purchased or leased class vehicles in the

1 time period before New GM came into existence, which cars were still on the road
2 after New GM came into existence (the "Florida Unjust Enrichment Class").

3 442. New GM has received and retained a benefit from the Plaintiffs and
4 inequity has resulted.

5 443. New GM has benefitted from selling and leasing defective cars,
6 including Certified Pre-Owned cars, whose value was artificially inflated by New
7 GM's concealment of defect issues that plagued the class vehicles, for more than
8 they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced
9 to pay other costs.

10 444. With respect to the class vehicles purchased before New GM came into
11 existence that were still on the road after New GM came into existence and as to
12 which New GM had unjustly and unlawfully determined not to recall, New GM
13 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
14 from its statements about the success of New GM.

15 445. Thus, all Florida Unjust Enrichment Class Members conferred a benefit
16 on New GM.

17 446. It is inequitable for New GM to retain these benefits.

18 447. Plaintiffs were not aware about the true facts about class vehicles, and
19 did not benefit from GM's conduct.

20 448. New GM knowingly accepted the benefits of its unjust conduct.

21 449. As a result of New GM's conduct, the amount of its unjust enrichment
22 should be disgorged, in an amount according to proof.

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Illinois

COUNT XXVII

**VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE
BUSINESS PRACTICES ACT**

(815 ILCS 505/1, et seq. and 720 ILCS 295/1A)

450. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

451. This claim is brought only on behalf of Nationwide Class Members who are Illinois residents (the "Illinois Class").

452. New GM is a "person" as that term is defined in 815 ILCS 505/1(c).

453. Plaintiff and the Illinois Class are "consumers" as that term is defined in 815 ILCS 505/1(e).

454. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2.

455. New GM participated in misleading, false, or deceptive acts that violated the Illinois CFA. New GM engaged in deceptive business practices prohibited by the Illinois CFA.

456. In the course of its business, New GM systematically devalued safety and concealed defects in the class vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in

1 connection with the sale of class vehicles.

2 457. From the date of its inception on July 11, 2009, New GM knew of many
3 defects affecting many models and years of the class vehicles, because of (i) the
4 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
5 investigations, and notifications from regulatory authorities; and (iii) ongoing
6 performance of New GM's TREAD Act obligations. New GM became aware of
7 other serious defects and systemic safety issues years ago, but concealed all of that
8 information.

9 458. New GM was also aware that it valued cost-cutting over safety, selected
10 parts from the cheapest supplier regardless of quality, and actively discouraged
11 employees from finding and flagging known safety defects, and that this approach
12 would necessarily cause the existence of more defects in the vehicles it designed and
13 manufactured and the failure to disclose and remedy defects in all class vehicles.
14 New GM concealed this information as well.

15 459. By failing to disclose and by actively concealing the many defects in the
16 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
17 presenting itself as a reputable manufacturer that valued safety and stood behind its
18 vehicles after they were sold, New GM engaged in unfair and deceptive business
19 practices in violation of the Illinois CFA.

20 460. In the course of New GM's business, it willfully failed to disclose and
21 actively concealed the dangerous risk posed by the defects discussed above. New
22 GM compounded the deception by repeatedly asserting that class vehicles were safe,
23 reliable, and of high quality, and by claiming to be a reputable manufacturer that
24 valued safety and stood behind its vehicles once they are on the road.

25 461. New GM's unfair or deceptive acts or practices were likely to and did in
26 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
27 reliability of the class vehicles, the quality of the GM brand, the devaluing of safety
28 at New GM, and the true value of the class vehicles.

1 462. New GM intentionally and knowingly misrepresented material facts
2 regarding the class vehicles with an intent to mislead Plaintiffs and the Illinois Class.

3 463. New GM knew or should have known that its conduct violated the
4 Illinois CFA.

5 464. As alleged above, New GM made material statements about the safety
6 and reliability of the class vehicles and the GM brand that were either false or
7 misleading.

8 465. New GM owed Plaintiffs a duty to disclose the true safety and reliability
9 of the class vehicles and the devaluing of safety at New GM, because New GM:

10 (a) Possessed exclusive knowledge that it valued cost-cutting over
11 safety, selected parts from the cheapest supplier regardless of quality, and actively
12 discouraged employees from finding and flagging known safety defects, and that this
13 approach would necessarily cause the existence of more defects in the vehicles it
14 designed and manufactured;

15 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

16 (c) Made incomplete representations about the safety and reliability
17 of the class vehicles generally, and the valve guide defects in particular, while
18 purposefully withholding material facts from Plaintiffs that contradicted these
19 representations.

20 466. Because New GM fraudulently concealed the defects in the class
21 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
22 attached to those vehicles by New GM's conduct, they are now worth significantly
23 less than they otherwise would be.

24 467. New GM's systemic devaluation of safety and its concealment of the
25 defects in the class vehicles were material to Plaintiffs and the Illinois Class. A
26 vehicle made by a reputable manufacturer of vehicles is worth more than an
27 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
28 conceals defects rather than promptly remedying them.

1 468. Plaintiffs and the Illinois Class suffered ascertainable loss caused by
2 New GM's misrepresentations and its concealment of and failure to disclose material
3 information. Plaintiffs who purchased class vehicles after the date of New GM's
4 inception either would have paid less for their vehicles or would not have purchased
5 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
6 of New GM's misconduct.

7 469. Regardless of time of purchase or lease, no Plaintiffs would have
8 maintained and continued to drive their vehicles had they been aware of New GM's
9 misconduct. By contractually assuming TREAD Act responsibilities with respect to
10 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
11 those vehicles because the TREAD Act on its face only applies to vehicle
12 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
13 vehicle owners to refrain from unfair and deceptive acts or practices under the
14 Illinois CFA. And, in any event, all class vehicle owners suffered ascertainable loss
15 in the form of the diminished value of their vehicles as a result of New GM's
16 deceptive and unfair acts and practices made in the course of New GM's business.

17 470. As a direct and proximate result of New GM's violations of the Illinois
18 CFA, Plaintiffs and the Illinois Class have suffered injury-in-fact and/or actual
19 damage.

20 471. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Class seek
21 monetary relief against New GM in the amount of actual damages, as well as
22 punitive damages because New GM acted with fraud and/or malice and/or was
23 grossly negligent.

24 472. Plaintiffs also seek an order enjoining New GM's unfair and/or
25 deceptive acts or practices, punitive damages, and attorneys' fees, and any other just
26 and proper relief available under 815 ILCS § 505/1 et seq.

27 ///

28 ///

COUNT XXVIII

FRAUD BY CONCEALMENT

473. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

474. This claim is brought on behalf of Nationwide Class Members who are Illinois residents (the "Illinois Class").

475. New GM concealed and suppressed material facts concerning the quality of the class vehicles.

476. New GM concealed and suppressed material facts concerning the culture of New GM -- a culture characterized by an emphasis on cost-cutting, the studious avoidance of quality issues, and a shoddy design process.

477. New GM concealed and suppressed material facts concerning the defects in the class vehicles, and that it valued cost-cutting over quality and took steps to ensure that its employees did not reveal known defects to regulators or consumers.

478. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the class vehicles and because the representations played a significant role in the value of the vehicles.

479. New GM had a duty to disclose the many defects in the class vehicles because they were known and/or accessible only to New GM, were in fact known to New GM as of the time of its creation in 2009 and at every point thereafter, New GM had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Illinois Class. New GM also had a duty to disclose because it made many general affirmative

1 representations about the safety, quality, and lack of defects in its vehicles, as set
2 forth above, which were misleading, deceptive and incomplete without the disclosure
3 of the additional facts set forth above regarding defects in the class vehicles. Having
4 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
5 the partial truth, but the entire truth. These omitted and concealed facts were material
6 because they directly impact the value of the class vehicles purchased or leased by
7 Plaintiffs and the Illinois Class.

8 480. New GM actively concealed and/or suppressed these material facts, in
9 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
10 image and cost New GM money, and it did so at the expense of Plaintiffs and the
11 Illinois Class.

12 481. On information and belief, New GM has still not made full and adequate
13 disclosure and continues to defraud Plaintiffs and the Illinois Class and conceal
14 material information regarding defects that exist in the class vehicles.

15 482. Plaintiffs and the Illinois Class were unaware of these omitted material
16 facts and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts, in that they would not have purchased cars manufactured by New
18 GM; and/or they would not have purchased cars manufactured by Old GM in the
19 time after New GM had come into existence and had fraudulently opted to conceal,
20 and to misrepresent, the true facts about the vehicles; and/or would not have
21 continued to drive their vehicles or would have taken other affirmative steps.
22 Plaintiffs' and the Illinois Class's actions were justified. New GM was in exclusive
23 control of the material facts and such facts were not known to the public, Plaintiffs,
24 or the Illinois Class.

25 483. Because of the concealment and/or suppression of the facts, Plaintiffs
26 and the Illinois Class sustained damage because they own vehicles that diminished in
27 value as a result of New GM's concealment of, and failure to timely disclose, the
28 defects in the class vehicles and the quality issues engendered by New GM's

1 corporate policies. Had they been aware of the defects that existed in the class
2 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
3 New GM came into existence either would have paid less for their vehicles or would
4 not have purchased or leased them at all; and no Plaintiffs regardless of time of
5 purchase or lease would have maintained their vehicles.

6 484. The value of all Illinois Class Members' vehicles has diminished as a
7 result of New GM's fraudulent concealment of the defects which have tarnished the
8 Corvette brand and made any reasonable consumer reluctant to purchase any of the
9 class vehicles, let alone pay what otherwise would have been fair market value for
10 the vehicles.

11 485. Accordingly, New GM is liable to the Illinois Class for damages in an
12 amount to be proven at trial.

13 486. New GM's acts were done maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiffs' and the Illinois Class's
15 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
16 of punitive damages in an amount sufficient to deter such conduct in the future,
17 which amount is to be determined according to proof.

18 **COUNT. XXIX**

19 **FRAUD BY CONCEALMENT OF THE RIGHT**

20 **TO FILE A CLAIM AGAINST OLD GM IN BANKRUPTCY**

21 487. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 488. This claim is brought only on behalf of Class members who are Illinois
24 residents and who owned their class vehicle for at least some period of time between
25 July 11, 2009 and November 30, 2009.

26 489. New GM was aware of the defects in class vehicles sold by Old GM
27 from the moment it came into existence upon entry of the Sale Order And Sale
28 Agreement by which New GM acquired substantially all the assets of Old GM.

1 490. The Illinois Class did not receive notice of the defect in the class
2 vehicles prior to the entry of the Sale Order. No recall occurred.

3 491. In September of 2009, the bankruptcy court entered the Bar Date Order,
4 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims
5 to be filed against Old GM.

6 492. Because New GM concealed its knowledge of the defect in the class
7 vehicles, the Illinois Class did not receive notice of the defect prior to the passage of
8 the Bar Date. No recall occurred.

9 493. In 2011, the bankruptcy court approved a Chapter 11 Plan under which
10 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds
11 of the bankruptcy sale to, among others, the holders of claims that were ultimately
12 allowed.

13 494. The out-of-pocket consideration provided by New GM for its
14 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of
15 New GM common stock and two series of warrants, each to purchase 7.5% of the
16 post-closing shares of New GM (collectively, the "New GM Securities").

17 495. Through an "accordion feature" in the Sale Agreement, New GM agreed
18 that it would provide additional consideration if the aggregate amount of allowed
19 general unsecured claims exceeded \$35 billion. In that event, New GM would be
20 required to issue additional shares of New GM Common Stock for the benefit of the
21 GUC Trust's beneficiaries.

22 496. As of September 30, 2014, the total amount of Allowed Claims was
23 approximately \$31.854 billion, and the total amount of Disputed Claims was
24 approximately \$79.5 million.

25 497. As of September 30, 2014, the GUC Trust had distributed more than
26 89% of the New GM Securities. After a subsequent November 12 distribution, the
27 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all of
28 which is already slated to pay the GUC Trust's expenses and existing beneficiaries of

1 the Trust.

2 498. But for New GM's fraudulent concealment of the defects, the Illinois
3 Class would have filed claims against Old GM before the Bar Date.

4 499. Had the Illinois Class filed timely claims before the Bar Date, the claims
5 would have been allowed.

6 500. New GM's concealment and suppression of the material fact of the
7 defect in class vehicles over the first several months of its existence served to prevent
8 the filing of claims by the Class.

9 501. New GM had a duty to disclose the defects in class vehicles because the
10 information was known and/or accessible only to New GM who had superior
11 knowledge and access to the facts, and New GM knew the facts were not known to
12 or reasonably discoverable by Plaintiffs and the Illinois Class. These omitted and
13 concealed facts were material because they directly impacted the safety and the value
14 of the class vehicles purchased or leased by Plaintiffs and the Illinois Class, who had
15 a limited period of time in which to file a claim against the manufacturer of the
16 vehicles, Old GM.

17 502. Plaintiffs and the Illinois Class were unaware of these omitted material
18 facts and would not have acted as they did if they had known of the concealed and/or
19 suppressed facts. Plaintiffs' and the Illinois Class's actions were justified. New GM
20 was in exclusive control of the material facts and such facts were not known to the
21 public, Plaintiffs, or the Illinois Class.

22 503. Because of the concealment and/or suppression of the facts, Plaintiffs
23 and the Illinois Class sustained damage because they lost their chance to file a claim
24 against Old GM and seek payment from the GUC Trust. Had they been aware of the
25 defects that existed in their vehicles, Plaintiffs would have timely filed claims and
26 would have recovered from the GUC Trust.

27 504. Accordingly, New GM is liable to the Illinois Class members for their
28 damages in an amount to be proven at trial.

1 505. New GM's acts were done maliciously, oppressively, deliberately, with
2 intent to defraud, and in reckless disregard of Plaintiffs' and the Illinois Class's
3 rights and well-being to enrich New GM. New GM's conduct warrants an
4 assessment of punitive damages in an amount sufficient to deter such conduct in the
5 future, which amount is to be determined according to proof.

6 **COUNT XXX**

7 **THIRD-PARTY BENEFICIARY CLAIM**

8 506. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 507. This claim is brought only on behalf of Class members who are Illinois
11 residents (the "Illinois Class").

12 508. In the Sales Agreement through which New GM acquired substantially
13 all of the assets of New GM, New GM explicitly agreed as follows:

14 From and after the Closing, [New GM] shall comply with the
15 certification, reporting and recall requirements of the National Traffic
16 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
17 Recall Enhancement, Accountability and Documentation Act, the Clean
18 Air Act, the California Health and Safety Code and similar Laws, in
19 each case, to the extent applicable in respect of vehicles and vehicle
20 parts manufactured or distributed by [Old GM].

21 509. With the exception of the portion of the agreement that purports to
22 immunize New GM from its own independent misconduct with respect to cars and
23 parts made by Old GM, the Sales Agreement is a valid and binding contract.

24 510. But for New GM's covenant to comply with the TREAD Act with
25 respect to cars and parts made by Old GM, the TREAD Act would have no
26 application to New GM with respect to those cars and parts. That is because the
27 TREAD Act on its face imposes reporting and recall obligations only on the
28 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

1 511. Because New GM agreed to comply with the TREAD Act with respect
2 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
3 make quarterly submissions to NHTSA of “early warning reporting” data, including
4 incidents involving property damage, warranty claims, consumer complaints, and
5 field reports concerning failure, malfunction, lack of durability or other performance
6 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
7 underlying records on which the early warning reports are based and all records
8 containing information on malfunctions that may be related to motor vehicle safety.
9 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
10 or should know that a safety defect exists – including notifying NHTSA and
11 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
12 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

13 512. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
14 Old GM, are the clear intended beneficiaries of New GM’s agreement to comply
15 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
16 benefit of having a manufacturer responsible for monitoring the safety of their Old
17 GM vehicles and making certain that any known defects would be promptly
18 remedied.

19 513. Although the Sale Order which consummated New GM’s purchase of
20 Old GM purported to give New GM immunity from claims concerning vehicles or
21 parts made by Old GM, the bankruptcy court recently ruled that provision to be
22 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
23 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
24 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
25 Plaintiffs’ third-party beneficiary claim as it is based solely on New GM’s post-sale
26 breaches of the promise it made in the Sale Agreement.

27 514. New GM breached its covenant to comply with the TREAD Act with
28 respect to the class vehicles, as it failed to take action to remediate the defects at any

1 time, up to the present.

2 515. Plaintiffs and the Illinois Class were damaged as a result of New GM's
3 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
4 the value of Old GM class vehicles has diminished in an amount to be determined at
5 trial.

6 **COUNT XXXI**

7 **UNJUST ENRICHMENT**

8 516. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 517. This claim is brought on behalf of members of the Illinois Class who
11 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
12 after New GM came into existence, and who purchased or leased class vehicles in the
13 time period before New GM came into existence, which cars were still on the road
14 after New GM came into existence (the "Illinois Unjust Enrichment Class").

15 518. New GM has received and retained a benefit from the Plaintiffs and
16 inequity has resulted.

17 519. New GM has benefitted from selling and leasing defective cars,
18 including Certified Pre-Owned cars, whose value was artificially inflated by New
19 GM's concealment of defect issues that plagued class vehicles, for more than they
20 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
21 pay other costs.

22 520. With respect to the class vehicles purchased before New GM came into
23 existence that were still on the road after New GM came into existence and as to
24 which New GM had unjustly and unlawfully determined not to recall, New GM
25 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
26 from its statements about the success of New GM.

27 521. Thus, all Illinois Unjust Enrichment Class Members conferred a benefit
28 on New GM.

1 522. It is inequitable for New GM to retain these benefits.

2 523. Plaintiffs were not aware about the true facts about class vehicles, and
3 did not benefit from GM's conduct.

4 524. New GM knowingly accepted the benefits of its unjust conduct.

5 525. As a result of New GM's conduct, the amount of its unjust enrichment
6 should be disgorged, in an amount according to proof.

7 Indiana

8 **COUNT XXXII**

9 **VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT**

10 **(IND. CODE § 24-5-0.5-3)**

11 526. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 527. This claim is brought only on behalf of Nationwide Class Members who
14 are Indiana residents (the "Indiana Class").

15 528. New GM is a "person" within the meaning of IND. CODE § 24-5-0.5-
16 2(2) and a "supplier" within the meaning of IND. CODE § 24-5-.05-2(a)(3).

17 529. Plaintiffs' and Indiana Class Members' purchases of the class vehicles
18 are "consumer transactions" within the meaning of IND. CODE § 24-5-.05-2(a)(1).

19 530. Indiana's Deceptive Consumer Sales Act ("Indiana DCSA") prohibits a
20 person from engaging in a "deceptive trade practice," which includes representing:

21 "(1) That such subject of a consumer transaction has sponsorship, approval,
22 performance, characteristics, accessories, uses, or benefits that they do not have, or
23 that a person has a sponsorship, approval, status, affiliation, or connection it does not
24 have; (2) That such subject of a consumer transaction is of a particular standard,
25 quality, grade, style or model, if it is not and if the supplier knows or should
26 reasonably know that it is not; ... (7) That the supplier has a sponsorship, approval or
27 affiliation in such consumer transaction that the supplier does not have, and which
28 the supplier knows or should reasonably know that the supplier does not have; ... (b)

1 Any representations on or within a product or its packaging or in advertising or
2 promotional materials which would constitute a deceptive act shall be the deceptive
3 act both of the supplier who places such a representation thereon or therein, or who
4 authored such materials, and such suppliers who shall state orally or in writing that
5 such representation is true if such other supplier shall know or have reason to know
6 that such representation was false.”

7 531. New GM participated in misleading, false, or deceptive acts that
8 violated the Indiana DCSA. By systematically devaluing safety and concealing
9 defects in class vehicles, New GM engaged in deceptive business practices
10 prohibited by the Indiana DCSA. New GM also engaged in unlawful trade practices
11 by: (1) representing that the class vehicles have characteristics, uses, benefits, and
12 qualities which they do not have; (2) representing that the class vehicles are of a
13 particular standard and quality when they are not; (3) advertising the class vehicles
14 with the intent not to sell them as advertised; and (4) otherwise engaging in conduct
15 likely to deceive.

16 532. New GM’s actions as set forth above occurred in the conduct of trade or
17 commerce.

18 533. In the course of its business, New GM systematically devalued safety
19 and concealed defects in the class vehicles as described herein and otherwise
20 engaged in activities with a tendency or capacity to deceive. New GM also engaged
21 in unlawful trade practices by employing deception, deceptive acts or practices,
22 fraud, misrepresentations, or concealment, suppression or omission of any material
23 fact with intent that others rely upon such concealment, suppression or omission, in
24 connection with the sale of class vehicles.

25 534. From the date of its inception on July 11, 2009, New GM knew of many
26 serious defects affecting many models and years of GM-branded vehicles, because of:
27 (i) the knowledge of Old GM personnel who remained at New GM; (ii) continuous
28 reports, investigations, and notifications from regulatory authorities; and (iii)

1 ongoing performance of New GM's TREAD Act obligations. New GM became
2 aware of other serious defects and systemic safety issues years ago, but concealed all
3 of that information.

4 535. New GM was also aware that it valued cost-cutting over safety, selected
5 parts from the cheapest supplier regardless of quality, and actively discouraged
6 employees from finding and flagging known safety defects, and that this approach
7 would necessarily cause the existence of more defects in the vehicles it designed and
8 manufactured and the failure to disclose and remedy defects in all GM-branded
9 vehicles. New GM concealed this information as well.

10 536. By failing to disclose and by actively concealing the many defects in the
11 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
12 presenting itself as a reputable manufacturer that valued safety and stood behind its
13 vehicles after they were sold, New GM engaged in deceptive business practices in
14 violation of the Indiana DCSA.

15 537. In the course of New GM's business, it willfully failed to disclose and
16 actively concealed the dangerous risk posed by the defects discussed above. New
17 GM compounded the deception by repeatedly asserting that the class vehicles were
18 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
19 that valued safety and stood behind its vehicles once they are on the road.

20 538. New GM's unfair or deceptive acts or practices were likely to and did in
21 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
22 reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing
23 of safety at New GM, and the true value of the class vehicles.

24 539. New GM intentionally and knowingly misrepresented material facts
25 regarding the class vehicles with an intent to mislead Plaintiffs and the Indiana Class.

26 540. New GM knew or should have known that its conduct violated the
27 Indiana DCSA.

1 541. As alleged above, New GM made material statements about the safety
2 and reliability of the class vehicles and the GM brand that were either false or
3 misleading.

4 542. New GM owed Plaintiffs a duty to disclose the true safety and reliability
5 of the class vehicles and the devaluing of safety at New GM, because New GM:

6 (a) Possessed exclusive knowledge that it valued cost-cutting over
7 safety, selected parts from the cheapest supplier regardless of quality, and actively
8 discouraged employees from finding and flagging known safety defects, and that this
9 approach would necessarily cause the existence of more defects in the vehicles it
10 designed and manufactured;

11 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

12 (c) Made incomplete representations about the safety and reliability
13 of the class vehicles generally, and the valve guide defects in particular, while
14 purposefully withholding material facts from Plaintiffs that contradicted these
15 representations.

16 543. Because New GM fraudulently concealed the defects in the class
17 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
18 attached to those vehicles by New GM's conduct, they are now worth significantly
19 less than they otherwise would be.

20 544. New GM's systemic devaluation of safety and its concealment of the
21 defects in the class vehicles were material to Plaintiffs and the Indiana Class. A
22 vehicle made by a reputable manufacturer of vehicles is worth more than an
23 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
24 conceals defects rather than promptly remedying them.

25 545. Plaintiffs and the Indiana Class suffered ascertainable loss caused by
26 New GM's misrepresentations and its concealment of and failure to disclose material
27 information. Plaintiffs who purchased class vehicles after the date of New GM's
28 inception either would have paid less for their vehicles or would not have purchased

1 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
2 of New GM's misconduct.

3 546. Regardless of time of purchase or lease, no Plaintiffs would have
4 maintained and continued to drive their vehicles had they been aware of New GM's
5 misconduct. By contractually assuming TREAD Act responsibilities with respect to
6 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
7 those vehicles because the TREAD Act on its face only applies to vehicle
8 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
9 vehicle owners to refrain from unfair and deceptive acts or practices under the
10 Indiana DCSA. And, in any event, all class vehicle owners suffered ascertainable
11 loss in the form of the diminished value of their vehicles as a result of New GM's
12 deceptive and unfair acts and practices made in the course of New GM's business.

13 547. As a direct and proximate result of New GM's violations of the Indiana
14 DCSA, Plaintiffs and the Indiana Class have suffered injury-in-fact and/or actual
15 damage.

16 548. Pursuant to IND. CODE § 24-5-0.5-4, Plaintiffs and the Indiana Class
17 seek monetary relief against New GM measured as the greater of (a) actual damages
18 in an amount to be determined at trial and (b) statutory damages in the amount of
19 \$500 for each Plaintiff and each Indiana Class member, including treble damages up
20 to \$1,000 for New GM's willfully deceptive acts.

21 549. Plaintiff also seeks punitive damages based on the outrageousness and
22 recklessness of the New GM's conduct and New GM's high net worth.

23 **COUNT XXXIII**

24 **FRAUD BY CONCEALMENT**

25 550. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.

27 551. This claim is brought on behalf of Nationwide Class Members who are
28 Indiana residents (the "Indiana Class").

1 552. New GM concealed and suppressed material facts concerning the
2 quality of the class vehicles.

3 553. New GM concealed and suppressed material facts concerning the
4 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
5 studious avoidance of quality issues, and a shoddy design process.

6 554. New GM concealed and suppressed material facts concerning the
7 defects in the class vehicles, and that it valued cost-cutting over quality and took
8 steps to ensure that its employees did not reveal known defects to regulators or
9 consumers.

10 555. New GM did so in order to boost confidence in its vehicles and falsely
11 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle;
12 that New GM was a reputable manufacturer that stands behind its vehicles after they
13 are sold and that its vehicles are safe and reliable. The false representations were
14 material to consumers, both because they concerned the quality and safety of the
15 class vehicles and because the representations played a significant role in the value o
16 the vehicles.

17 556. New GM had a duty to disclose the defects in the class vehicles because
18 they were known and/or accessible only to New GM, were in fact known to New
19 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
20 superior knowledge and access to the facts, and New GM knew the facts were not
21 known to or reasonably discoverable by Plaintiffs and the Indiana Class. New GM
22 also had a duty to disclose because it made many general affirmative representations
23 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
24 were misleading, deceptive and incomplete without the disclosure of the additional
25 facts set forth above regarding defects in the class vehicles. Having volunteered to
26 provide information to Plaintiffs, GM had the duty to disclose not just the partial
27 truth, but the entire truth. These omitted and concealed facts were material because
28 they directly impact the value of the class vehicles purchased or leased by Plaintiffs

1 and the Indiana Class.

2 557. New GM actively concealed and/or suppressed these material facts, in
3 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
4 image and cost New GM money, and it did so at the expense of Plaintiffs and the
5 Indiana Class.

6 558. On information and belief, New GM has still not made full and adequate
7 disclosure and continues to defraud Plaintiffs and the Indiana Class and conceal
8 material information regarding defects that exist in the class vehicles.

9 559. Plaintiffs and the Indiana Class were unaware of these omitted material
10 facts and would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased cars manufactured by New
12 GM; and/or they would not have purchased cars manufactured by Old GM in the
13 time after New GM had come into existence and had fraudulently opted to conceal,
14 and to misrepresent, the true facts about the vehicles; and/or would not have
15 continued to drive their vehicles or would have taken other affirmative steps.
16 Plaintiffs' and the Indiana Class's actions were justified. New GM was in exclusive
17 control of the material facts and such facts were not known to the public, Plaintiffs,
18 or the Indiana Class.

19 560. Because of the concealment and/or suppression of the facts, Plaintiffs
20 and the Indiana Class sustained damage because they own vehicles that diminished
21 in value as a result of New GM's concealment of, and failure to timely disclose, the
22 defects in the class vehicles and the quality issues engendered by New GM's
23 corporate policies. Had they been aware of the defects that existed in the class
24 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
25 New GM came into existence either would have paid less for their vehicles or would
26 not have purchased or leased them at all; and no Plaintiffs regardless of time of
27 purchase or lease would have maintained their vehicles.

28 ////

8 563. New GM's acts were done maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiffs' and the Indiana Class's
10 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
11 of punitive damages in an amount sufficient to deter such conduct in the future,
12 which amount is to be determined according to proof.

(IND. CODE § 26-1-2-314)

26 568. These vehicles, when sold and at all times thereafter, were not
27 merchantable and are not fit for the ordinary purpose for which cars are used.
28 Specifically, the class vehicles are inherently defective in that there are defects which

1 cause inordinate and unusual early wear and failure of engines.

2 569. New GM was provided notice of these issues by numerous complaints
3 filed against it, internal investigations, and by numerous individual letters and
4 communications sent by Plaintiffs and the Indiana Class.

5 570. As a direct and proximate result of New GM's breach of the implied
6 warranty of merchantability, Plaintiffs and the Indiana Class members have been
7 damaged in an amount to be proven at trial.

8 **COUNT XXXV**

9 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**
10 **AGAINST OLD GM IN BANKRUPTCY**

11 571. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 572. This claim is brought only on behalf of Class members who are Indiana
14 residents and who owned their class vehicle for at least some period of time between
15 July 11, 2009 and November 30, 2009.

16 573. New GM was aware of the defects in class vehicles sold by Old GM
17 from the moment it came into existence upon entry of the Sale Order And Sale
18 Agreement by which New GM acquired substantially all the assets of Old GM.

19 574. The Indiana Class did not receive notice of the defect in class vehicles
20 prior to the entry of the Sale Order. No recall occurred.

21 575. In September of 2009, the bankruptcy court entered the Bar Date Order,
22 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims
23 to be filed against Old GM.

24 576. Because New GM concealed its knowledge of the defect in class
25 vehicles, the Indiana Class did not receive notice of the defects prior to the passage
26 of the Bar Date. No recall occurred.

27 577. In 2011, the bankruptcy court approved a Chapter 11 Plan under which
28 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds

1 of the bankruptcy sale to, among others, the holders of claims that were ultimately
2 allowed.

3 578. The out-of-pocket consideration provided by New GM for its
4 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of
5 New GM common stock and two series of warrants, each to purchase 7.5% of the
6 post-closing shares of New GM (collectively, the “New GM Securities”).

7 579. Through an “accordion feature” in the Sale Agreement, New GM agreed
8 that it would provide additional consideration if the aggregate amount of allowed
9 general unsecured claims exceeded \$35 billion. In that event, New GM would be
10 required to issue additional shares of New GM Common Stock for the benefit of the
11 GUC Trust’s beneficiaries.

12 580. As of September 30, 2014, the total amount of Allowed Claims was
13 approximately \$31.854 billion, and the total amount of Disputed Claims was
14 approximately \$79.5 million.

15 581. As of September 30, 2014, the GUC Trust had distributed more than
16 89% of the New GM Securities. After a subsequent November 12 distribution, the
17 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all of
18 which is already slated to pay the GUC Trust’s expenses and existing beneficiaries of
19 the Trust.

20 582. But for New GM’s fraudulent concealment of the defects, the Indiana
21 Class would have filed claims against Old GM before the Bar Date.

22 583. Had the Indiana Class filed timely claims before the Bar Date, the
23 claims would have been allowed.

24 584. New GM’s concealment and suppression of the material fact of the
25 defect in class vehicles over the first several months of its existence served to prevent
26 the filing of claims by the Class.

27 585. New GM had a duty to disclose the defect in class vehicles because the
28 information was known and/or accessible only to New GM who had superior

1 knowledge and access to the facts, and New GM knew the facts were not known to
2 or reasonably discoverable by Plaintiffs and the Indiana Class. These omitted and
3 concealed facts were material because they directly impacted the safety and the value
4 of the class vehicles purchased or leased by Plaintiffs and the Indiana Class, who had
5 a limited period of time in which to file a claim against the manufacturer of the
6 vehicles, Old GM.

7 586. Plaintiffs and the Indiana Class were unaware of these omitted material
8 facts and would not have acted as they did if they had known of the concealed and/or
9 suppressed facts. Plaintiffs' and the Indiana Class's actions were justified. New GM
10 was in exclusive control of the material facts and such facts were not known to the
11 public, Plaintiffs, or the Indiana Class.

12 587. Because of the concealment and/or suppression of the facts, Plaintiffs
13 and the Indiana Class sustained damage because they lost their chance to file a claim
14 against Old GM and seek payment from the GUC Trust. Had they been aware of the
15 defects that existed in their vehicles, Plaintiffs would have timely filed claims and
16 would have recovered from the GUC Trust.

17 588. Accordingly, New GM is liable to the Indiana Class members for their
18 damages in an amount to be proven at trial.

19 589. New GM's acts were done maliciously, oppressively, deliberately, with
20 intent to defraud, and in reckless disregard of Plaintiffs' and the Indiana Class's
21 rights and well-being to enrich New GM. New GM's conduct warrants an
22 assessment of punitive damages in an amount sufficient to deter such conduct in the
23 future, which amount is to be determined according to proof.

24 **COUNT XXXVI**

25 **THIRD-PARTY BENEFICIARY CLAIM**

26 590. Plaintiffs reallege and incorporate by reference all paragraphs as though
27 fully set forth herein.

28 ///

1 591. This claim is brought only on behalf of Class members who are Indiana
2 residents (the "Indiana Class").

3 592. In the Sales Agreement through which New GM acquired substantially
4 all of the assets of New GM, New GM explicitly agreed as follows:

5 From and after the Closing, [New GM] shall comply with the
6 certification, reporting and recall requirements of the National Traffic
7 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
8 Recall Enhancement, Accountability and Documentation Act, the Clean
9 Air Act, the California Health and Safety Code and similar Laws, in
10 each case, to the extent applicable in respect of vehicles and vehicle
11 parts manufactured or distributed by [Old GM].

12 593. With the exception of the portion of the agreement that purports to
13 immunize New GM from its own independent misconduct with respect to cars and
14 parts made by Old GM, the Sales Agreement is a valid and binding contract.

15 594. But for New GM's covenant to comply with the TREAD Act with
16 respect to cars and parts made by Old GM, the TREAD Act would have no
17 application to New GM with respect to those cars and parts. That is because the
18 TREAD Act on its face imposes reporting and recall obligations only on the
19 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

20 595. Because New GM agreed to comply with the TREAD Act with respect
21 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
22 make quarterly submissions to NHTSA of "early warning reporting" data, including
23 incidents involving property damage, warranty claims, consumer complaints, and
24 field reports concerning failure, malfunction, lack of durability or other performance
25 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
26 underlying records on which the early warning reports are based and all records
27 containing information on malfunctions that may be related to motor vehicle safety.
28 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows

1 or should know that a safety defect exists – including notifying NHTSA and
2 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
3 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

4 596. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
5 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
6 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
7 benefit of having a manufacturer responsible for monitoring the safety of their Old
8 GM vehicles and making certain that any known defects would be promptly
9 remedied.

10 597. Although the Sale Order which consummated New GM's purchase of
11 Old GM purported to give New GM immunity from claims concerning vehicles or
12 parts made by Old GM, the bankruptcy court recently ruled that provision to be
13 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
14 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
15 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
16 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
17 breaches of the promise it made in the Sale Agreement.

18 598. New GM breached its covenant to comply with the TREAD Act with
19 respect to the class vehicles, as it failed to take action to remediate the defect at any
20 time, up to the present.

21 599. Plaintiffs and the Indiana Class were damaged as a result of New GM's
22 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
23 the value of Old GM class vehicles has diminished in an amount to be determined at
24 trial.

25 **COUNT XXXVII**

26 **UNJUST ENRICHMENT**

27 600. Plaintiffs reallege and incorporate by reference all paragraphs as though
28 fully set forth herein.

1 601. This claim is brought on behalf of members of the Indiana Class who
2 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
3 after New GM came into existence, and who purchased or leased class vehicles in the
4 time period before New GM came into existence, which cars were still on the road
5 after New GM came into existence (the "Indiana Unjust Enrichment Class").

6 602. New GM has received and retained a benefit from the Plaintiffs and
7 inequity has resulted.

8 603. New GM has benefitted from selling and leasing defective cars,
9 including Certified Pre-Owned cars, whose value was artificially inflated by New
10 GM's concealment of defect issues that plagued class vehicles, for more than they
11 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
12 pay other costs.

13 604. With respect to the class vehicles purchased before New GM came into
14 existence that were still on the road after New GM came into existence and as to
15 which New GM had unjustly and unlawfully determined not to recall, New GM
16 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
17 from its statements about the success of New GM.

18 605. Thus, all Indiana Unjust Enrichment Class Members conferred a benefit
19 on New GM.

20 606. It is inequitable for New GM to retain these benefits.

21 607. Plaintiffs were not aware about the true facts about class vehicles, and
22 did not benefit from GM's conduct.

23 608. New GM knowingly accepted the benefits of its unjust conduct.

24 609. As a result of New GM's conduct, the amount of its unjust enrichment
25 should be disgorged, in an amount according to proof.

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1 Michigan

2 COUNT XXXVIII

3 VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
4 (MICH. COMP. LAWS § 445.903, et seq.)

5 610. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 611. This claim is brought only on behalf of Nationwide Class Members who
8 are Michigan residents (the "Michigan Class").

9 612. Plaintiffs and the Michigan Class Members were "person[s]" within the
10 meaning of the MICH. COMP. LAWS § 445.902(1)(d).

11 613. At all relevant times hereto, New GM was a "person" engaged in "trade
12 or commerce" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d) and
13 (g).

14 614. The Michigan Consumer Protection Act ("Michigan CPA") prohibits
15 "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of
16 trade or commerce" MICH. COMP. LAWS § 445.903(1). New GM engaged in
17 unfair, unconscionable, or deceptive methods, acts or practices prohibited by the
18 Michigan CPA, including: "(c) Representing that goods or services have . . .
19 characteristics . . . that they do not have . . . ;" "(e) Representing that goods or
20 services are of a particular standard . . . if they are of another;" "(i) Making false or
21 misleading statements of fact concerning the reasons for, existence of, or amounts of
22 price reductions;" "(s) Failing to reveal a material fact, the omission of which tends
23 to mislead or deceive the consumer, and which fact could not reasonably be known
24 by the consumer;" "(bb) Making a representation of fact or statement of fact material
25 to the transaction such that a person reasonably believes the represented or suggested
26 state of affairs to be other than it actually is;" and "(cc) Failing to reveal facts that are
27 material to the transaction in light of representations of fact made in a positive
28 manner." MICH. COMP. LAWS § 445.903(1). By systematically devaluing safety

1 and concealing defects in the class vehicles, New GM participated in unfair,
2 deceptive, and unconscionable acts that violated the Michigan CPA.

3 615. In the course of its business, New GM systematically devalued safety
4 and concealed defects in the class vehicles as described herein and otherwise
5 engaged in activities with a tendency or capacity to deceive. New GM also engaged
6 in unlawful trade practices by employing deception, deceptive acts or practices,
7 fraud, misrepresentations, or concealment, suppression or omission of any material
8 fact with intent that others rely upon such concealment, suppression or omission, in
9 connection with the sale of class vehicles.

10 616. From the date of its inception on July 11, 2009, New GM knew of many
11 serious defects affecting many models and years of GM-branded vehicles, because of
12 (i) the knowledge of Old GM personnel who remained at New GM; (ii) continuous
13 reports, investigations, and notifications from regulatory authorities; and (iii)
14 ongoing performance of New GM's TREAD Act obligations. New GM became
15 aware of other serious defects and systemic safety issues years ago, but concealed all
16 of that information.

17 617. New GM was also aware that it valued cost-cutting over safety, selected
18 parts from the cheapest supplier regardless of quality, and actively discouraged
19 employees from finding and flagging known safety defects, and that this approach
20 would necessarily cause the existence of more defects in the vehicles it designed and
21 manufactured and the failure to disclose and remedy defects in all GM-branded
22 vehicles. New GM concealed this information as well.

23 618. By failing to disclose and by actively concealing the many defects in
24 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality,
25 and by presenting itself as a reputable manufacturer that valued safety and stood
26 behind its vehicles after they were sold, New GM engaged in unfair, unconscionable,
27 and deceptive business practices in violation of the Michigan CPA.

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